



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JUN 19 2018

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Stacy J. Stotts, Esq.
Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City, Missouri 64112

SUBJ: First Response Environmental Group
Consent Agreement and Final Order
Docket No. TSCA-04-2018-2901(b)

Dear Ms. Stotts:

Enclosed please find a copy of the executed Consent Agreement and Final Order (CAFO) as filed with the Regional Hearing Clerk (RHC) in the above-referenced matter. The CAFO is effective on the date it is filed with the RHC, and the penalty due date is calculated from the effective date.

If you have any questions or concerns, please contact Michi Kono at (404) 562-9558.

Sincerely,

A handwritten signature in blue ink, appearing to read "Larry L. Lamberth".

Larry L. Lamberth
Chief, Enforcement and Compliance Branch
Resource Conservation and Restoration Division

Enclosures

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:)
)
First Response, a Tradebe Company,)
d/b/a First Response Environmental Group)
1411 South Dickerson Road)
Goodlettsville, Tennessee 37072)
)
Respondent.)
_____)

Docket No. TSCA-04-2018-2901(b)

2018 JUN 19 AM 10:37
HEARINGS CLERK
EPA REGION 4

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Resource Conservation and Restoration Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is First Response, a Tradebe Company, doing business as First Response Environmental Group (FREG). Tradebe's acquisition of FREG occurred after the actions occurred that form the basis of the allegations herein.
2. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under TSCA to the EPA Region 4 Regional Administrator by EPA Delegation 12-2-A, dated May 11, 1994. The Region 4 Regional Administrator has delegated this authority to the

Director of the Resource Conservation and Restoration Division by EPA Region 4 Delegation 12-2-A, dated January 14, 2009. Pursuant to that Delegation, the Director of the Resource Conservation and Restoration Division has the authority to commence an enforcement Action as the Complainant in this matter and has the authority to sign Consent Agreements memorializing settlements between the EPA and Respondent.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605, the Administrator of EPA promulgated regulations in 40 C.F.R. Part 761 pertaining to Polychlorinated Biphenyls (PCBs). Failure to comply with any such rule constitutes a violation of Section 15 of TSCA, 15 U.S.C. § 2614. Any person who violates a provision of Section 15 of TSCA may be assessed a civil penalty in accordance with Section 16(a) of TSCA and 40 C.F.R. Part 19, as amended. Each day a violation continues may constitute a separate violation.

III. Specific Allegations

5. Respondent is a user of PCB Items operating in the State of Tennessee and is a “person” as defined in 40 C.F.R. § 761.3.

6. On or about September 1, 2016, a Clarksville Department of Electricity Lightband (CDEL) employee discovered a leak in a Westinghouse Pad Mount Transformer with serial number TAV4053-04, 1500 KVA, and a 541 gallon capacity, at 1420 Paradise Hill Road, Clarksville, Tennessee (Westinghouse Transformer). The name plate for the Westinghouse Transformer did not identify the date of manufacture or the type of dielectric fluid.
7. 40 C.F.R. § 761.2(a)(3) requires any person to assume that a transformer is a PCB Transformer if the date of manufacture and the type of dielectric fluid are unknown.
8. On or about October 6, 2016, CDEL sampled the dielectric fluid in the Westinghouse Transformer and determined the PCB concentration was 4,222 ppm.
9. CDEL estimated that approximately twenty gallons of PCB oil had leaked from the Westinghouse Transformer.
10. On or about December 20, 2016, FREG, a contractor for CDEL, began remediation by removing the Westinghouse Transformer and the corresponding PCB oil within the transformer.
11. The PCB oil was transferred into two (2) 275-gallon totes and manifested on Hazardous Waste Manifest #002802610JJK, to LEI, Inc. on March 17, 2017.
12. On or about December 20, 2016, FREG triple rinsed the Westinghouse Transformer with diesel fuel.
13. The diesel and PCB waste generated from rinsing the Westinghouse Transformer were placed into one (1) of the two (2) 275-gallon totes identified in Paragraph 11 above.
14. FREG recycled the empty Westinghouse Transformer at Bordeau Metals on December 20, 2016.

15. FREG transported one (1) 25-cubic yard roll-off of PCB solids from CDEL to Waste Management in Emelle, Alabama on Hazardous Waste Manifest #002802608JJK.
16. FREG signed Hazardous Waste Manifest #002802608JJK as the first transporter on December 20, 2016, and signed the manifest as the second transporter again on March 7, 2017.
17. FREG incorrectly signed the manifest as the first transporter on December 20, 2016. FREG did not actually take possession to transport the waste until March 7, 2017.
18. Hazardous Waste Manifest #002802610JJK, in which FREG was contracted by CDEL to fill out, incorrectly identified the two (2) totes of PCB oil, identified in paragraphs 11 and 13 above, as "Polychlorinated Biphenyl Solids."
19. 40 C.F.R. § 761.79 requires an approval to disassemble a PCB Transformer and decontaminate its non-porous components. FREG failed to obtain an approval to decontaminate the Westinghouse Transformer. Furthermore, transformers components that are not described in 40 C.F.R. § 761.79(a), such as intact transformer cores and coils, cannot be decontaminated. Therefore, EPA alleges that Respondent violated 40 C.F.R. § 761.79.
20. 40 C.F.R. § 761.60(b)(1) requires PCB Transformers to be disposed of in accordance with either of the following: (A) In an incinerator that complies with § 761.70; or (B) In a chemical waste landfill approved under § 761.75; provided that all free-flowing liquid is removed from the transformer, the transformer is filled with a solvent, the transformer is allowed to stand for at least 18 continuous hours, and then the solvent is thoroughly removed. FREG sent the empty Westinghouse Transformer for recycling at Bordeau Metals. Therefore, EPA alleges that Respondent violated 40 C.F.R. § 761.60(b)(1).

21. 40 C.F.R. § 761.211(b) requires the Transporter, before accepting the PCB waste to sign and date the manifest acknowledging acceptance. FREG signed Hazardous Waste Manifest #002802608JJK as the first transporter on December 20, 2016, and signed as the second transporter again on March 7, 2017. FREG did not take “acceptance” of the 25-cubic yard roll-off of PCB soil on December 20, 2016. That was the date the 25-cubic yard roll-off was transported back to CDEL’s main facility at 2021 Wilma Rudolph Blvd, Clarksville, Tennessee. The manifested roll-off was eventually sent off-site to a hazardous waste landfill on March 7, 2017, by FREG. Therefore, EPA alleges that Respondent violated 40 C.F.R. § 761.211(b).

22. 40 C.F.R. § 761.215(a)(1) identifies manifest discrepancies as including significant differences in type of PCB waste such as the substitution of solids for liquids. Hazardous Waste Manifest #002802610 JJK inaccurately identified PCB oil as solids. Therefore, EPA alleges that Respondent violated 40 C.F.R. § 761.215(a)(1).

IV. Consent Agreement

23. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual and legal allegations.

24. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed final order accompanying the consent agreement.

25. For the purposes of achieving a resolution by settlement, Respondent consents to the assessment of the penalty proposed by the EPA and agrees to pay the civil penalty as set forth in this CAFO.

26. Respondent certifies that, to the best of its knowledge, as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of TSCA.
27. In accordance with 40 C.F.R. § 22.18(c), compliance with this CAFO only resolves Respondent's liability for federal civil penalties for the allegations in Section III of this CAFO and does not affect the right of the EPA or U.S. to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA or other applicable laws and regulations.
28. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of TSCA.

V. Final Order

29. Respondent is assessed a civil penalty of **TWENTY-FIVE THOUSAND FIVE HUNDRED DOLLARS (\$25,500.00)**, which shall be paid within 30 days from the effective date of this CAFO.
30. Respondent shall remit the civil penalty by either (1) wire transfer, in accordance with instructions provided below, or (2) by a cashier's or certified check made payable to the "Treasurer, United States of America." If payment is made by check through the U.S. Postal Service, Respondent shall send the check to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000.

The check shall reference on its face the name of the Respondent and Docket Number of this CAFO.

For payment submittal by any overnight delivery service (Fed Ex, UPS, DHL, etc.), please use the following address:

U. S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101
(314) 425-1819

For payment by wire transfer, in lieu of a cashier's or certified check, if desired, should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Beneficiary = U.S. Environmental Protection Agency

31. At the time of payment, Respondent shall send a written statement that the payment has been made in accordance with this CAFO (along with a copy of the check if payment is made by check, or indicating that payment was by wire transfer) to each of the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960;

and

Kris Lippert
UST, PCB and OPA Section
Enforcement and Compliance Branch
Resource Conservation and Restoration Division
U.S. EPA Region 4

61 Forsyth Street SW
Atlanta, Georgia 30303-8960.

32. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
33. Pursuant to 31 U.S.C. § 3717, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.
34. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
35. This CAFO shall be binding upon the Respondent, its successors and assigns.
36. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.


VI. Effective Date

37. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Respondent: First Response, a Tradebe Company, d/b/a First Response
Environmental Group


Docket No.: TSCA-04-2018-2901(b)

By:  (Signature) Date: 5/23/18

Name: JEFF BESWICK (Typed or Printed)

Title: CEO (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By:  Date: 06/14/18

Carol J. Monell
Acting Director
Resource Conservation and Restoration Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 19th day of June, 2018.

By: 

Tanya Floyd
Regional Judicial Officer
EPA Region 4

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CAFO), for First Response Environmental Group, Docket Number: TSCA-04-2018-2901(b), on 6-19-18, and on 6-19-18, served the parties listed below in the manner indicated:

Michi Kono (Via EPA Internal Mail)
Attorney
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

Bob Caplan (Via EPA Internal Mail)
Senior Attorney
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

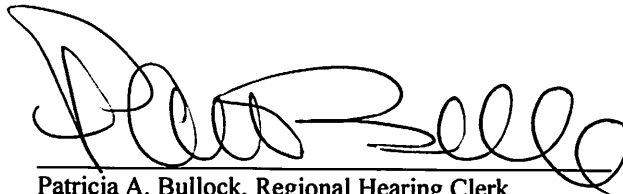
Kris Lippert (Via EPA Internal mail)
Enforcement and Compliance Branch
Resource Conservation and Restoration Division
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

Quantindra Smith (Via EPA Internal mail)
Enforcement and Compliance Branch
Resource Conservation and Restoration Division
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

Ms. Stacy Stotts, Esq. (Via Certified Mail – Return Receipt Requested)
Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City, Missouri 64112

Date:

6-19-18



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9511